

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.121.407 premises and general) ON PROPOSED AMENDMENT
requirements and 24.121.1505 restrooms)

TO: All Concerned Persons

1. On February 1, 2007, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Barbers and Cosmetologists (board) no later than 5:00 p.m., on January 26, 2007, to advise us of the nature of the accommodation that you need. Please contact Andy Verbanac, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdcos@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.121.407 PREMISES AND GENERAL REQUIREMENTS (1) The premises of all salons, shops₁ and schools must be kept clean, sanitary₁ and in a safe condition at all times.

(2) No services connected with a salon, shop₁ or school can be conducted in any room used as living or sleeping quarters.

(3) No other business can be conducted in a salon, shop₁ or school, except those regulated by the board or related to the industries regulated by the board, unless separated by a full-length partition.

(4) If there is another salon, shop₁ and school connected to a salon, shop₁ or school, there must be a door between the establishments that must remain closed during business hours.

(5) Salons, shops₁ and schools must provide direct entry into the salon, shop₁ or school from a public access area.

(6) Furniture must be kept clean, sanitary₁ and in a safe condition at all times.

(7) remains the same.

(8) Food must not be prepared and sold or stored in a salon, shop, school₁ or booth. Beverages that are prepared beyond the addition of water are prohibited.

The following exceptions apply:

(a) remains the same.

(b) items dispensed from vending machines if the machines comply with federal, state, and local laws; or

(c) if the salon, shop, or school is licensed as a food purveyor in accordance and in compliance with all state and county regulations.

(9) Single service disposable drinking cups must be available for client use unless the salon, shop, or school is licensed as a food purveyor as above.

~~(10) Alcoholic beverages are prohibited in a salon, shop or school, except where permitted in accordance with the state regulations of the Department of Revenue.~~

~~(11)~~ (10) If a blood spill should occur, the licensee, student, or cadet instructor shall follow the blood spill procedure adopted by the National Interstate Council of State Boards of Cosmetology (NIC). The board adopts and incorporates by reference the blood spill procedure as adopted by NIC, August 1998. A copy of the blood spill procedure is available at the board offices, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.

~~(12)~~ (11) The NIC blood spill procedure must be posted in all salons, shops, and schools.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, 37-31-311, MCA

REASON: The board finds it reasonably necessary to amend this rule and eliminate (10) as the regulation of the sale and service of alcohol falls under the jurisdiction of the Montana Department of Revenue. After discussion with department legal counsel, the board concluded that it is not necessary for the board to duplicate such regulation. In addition, punctuation is being amended throughout to comply with ARM formatting requirements.

24.121.1505 RESTROOMS (1) At least one restroom with a hand washing basin must be located on or near the premises of the salon or shop. ~~Every salon, shop and school must provide a restroom, including a hand washing basin.~~

~~(a) The restroom must be located within the new salon, shop or school. A restroom located in another part of the building that houses the salon, shop or school is not sufficient for the purpose of this rule.~~

~~(b) Following a change in ownership or location of an existing salon, shop or school, a restroom must be provided within the new salon, shop or school, or a variance requested from the board.~~

~~(c)~~ (a) In a residential salon or shop, clients shall not walk through any living area of the residence to access the restroom.

(2) Hand washing signage ~~instructions directing individuals to wash their hands before returning to work~~ must be posted in each restroom.

~~(3) A restroom must be completely enclosed by walls, door and ceilings.~~

~~(a)~~ (3) Restroom fixtures must be maintained in a clean, sanitary and safe condition at all times.

(4) remains the same.

~~(5) All restrooms must have mechanical ventilation.~~

~~(6)~~ (5) Single service sanitary towels or a workable hot an air dryer blower is required.

(7) and (8) remain the same but are renumbered (6) and (7).

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address issues continually coming before the board and to update the rule for current industry terminology and regulatory requirements. The board is eliminating the requirement for a restroom to be within the confines of a salon or shop and instead requires a restroom to be located near the salon or shop. Salon and shop owners continuously bring to the board requests for variances from the on premises restroom requirement. The board determined that requiring a restroom near the premises will adequately address public concerns. The board is deleting the school restroom requirement from this rule as it is addressed in ARM 24.121.803. The board is amending (2) after concluding that requiring hand washing signage to state that individuals must wash their hands is redundant and unnecessary. The board is proposing to delete (3) as the requirement for restroom walls and doors falls under the guidelines of the department's building standards program. The board is removing the restroom ventilation requirement in conjunction with the amendment of (1) since the restroom may not be owned or under direct control of the salon or shop owner. Terminology is being amended in (6) as single service towels are considered sanitary and all air dryers do not operate with heated air.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsdcos@mt.gov, and must be received no later than 5:00 p.m., February 9, 2007.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.cosmetology.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name

and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Barbers and Cosmetologists administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdcos@mt.gov, or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. A department attorney will be assigned to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 2, 2007